IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 368 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AS CHANDEKAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 368 of 1998
MR MD RANA for Petitioner No. 1
RULE SERVED for Respondent No. 1
MR JB PARDIWALA for Respondent No. 2
LAW OFFICER BRANCH for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 22/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.H.WAGHELA for the Court)

#. Pressing this petition under Article 226 of the Constitution only on the ground that no notice was issued to the petitioner before denying him full wages and allowances for the period of suspension, the learned counsel Mr. Rana submitted that the respondent was required to form an opinion in terms of Rule 152(2) of the Bombay Civil Services Rules and such formation of opinion was required to be expressed in the show cause notice so as to afford an opportunity to the petitioner to explain as to why suspension should have been treated as wholly unjustified.

#. Relevant facts of the case are simple and to the effect that the petitioner was suspended on 24.8.94 and reinstated on 11.9.97 after conclusion of the inquiry, resulting into an order that the charges levelled against the petitioner were not proved. The learned counsel initially denied issuance and receipt of the show cause notice under Rule 152. It was subsequently conceded that a specific notice dated 8.8.97 was, in fact, issued to and received by the petitioner. After narrating the fact that the High Court had come to a conclusion that the charges against the petitioner were not proved and he was exonerated and it was decided to issue show cause notice under Rule 152, the petitioner was specifically called upon to show cause as to why the proposed action of treating the period of suspension as the period not spent on duty should not be taken. It appears from the record that the petitioner had submitted his reply to the show cause notice by letter dated 1.9.97 and after considering the same, the impugned order holding that the action of suspending the petitioner was not wholly unjustified, was made. It was held in the impugned order that the contention of the petitioner that he was fully exonerated was not relevant. In fact, the real question was, whether on the basis of the statements given by responsible advocates and others before the Special Officer (Vigilance) of Gujarat High Court, pursuant to which a regular departmental inquiry was held, the action of suspending the petitioner was wholly unjustified. After considering the material on record, it was concluded that in the opinion of the High Court (on its administrative side), by no stretch of imagination, action of suspending the petitioner was wholly unjustified. On the contrary, it was completely and wholly justified. This finding and conclusion is not challenged.

#. The learned counsel for the petitioner harped upon the contention that the provisions of sub-rules (1) and (2) of Rule 152 of the Bombay Civil Services Rules were independent and not inter-connected. Therefore, a show cause notice clearly indicating the formation of an opinion regarding grant or denial of full pay and allowances for the period of suspension, was required to be given. The learned counsel relied upon the judgment of the Supreme Court in B.D. Gupta Vs. State of Haryana, reported in 1972 AIR SC 2472 and emphasized the observation therein that it was essential for a show cause notice to indicate the precise scope of the notice and also to indicate points on which officer concerned is expected to give a reply. These observations were made in the context of the show cause notice on the basis of which the delinquent was censured in the facts of that case.

#. The argument of the learned counsel appears to be based on a complete misreading of the provisions of Rule 152 which provides for making of specific order regarding pay and allowances to be paid to the government servant in case of his reinstatement after dismissal, removal or suspension. A conjoint reading and the scheme of sub-rules (1), (2) and (4) of Rule 152 clearly indicate that while it is incumbent upon the authority to consider and make specific order regarding pay and allowances to be paid to the government servant for the period of his absence, in cases of full exoneration after dismissal or removal, or in case of suspension being found to be wholly unjustified, full pay and allowances have to be paid to the government servant and in such cases, the period of absence from duty has to be treated as the period spent on duty for all purposes. Therefore, when the authority comes to a conclusion that the delinquent was fully exonerated or that his suspension was wholly unjustified, no question of any deduction from any payment arises and consequently, no question of issuing any show cause notice arises. It is only in a case where it is proposed to deny any part of full pay and allowance that the question of issuing a show cause notice under Rule 152 arises.

#. In the facts of the present case, the show cause notice clearly mentions that the show cause notice is issued under Rule 152 and the petitioner himself has correctly understood the import thereof and submitted his reply accordingly. Therefore, it is obviously an afterthought to contend firstly that, no show cause notice was issued and then to submit that the notice was

not legal and valid. We do not find any substance in the submissions made by the learned counsel and no other ground having been pressed and no other contention having been canvassed, the petition is dismissed. Rule is discharged with no order as to costs.

[R.K. ABICHANDANI, J.]

[D.H. WAGHELA, J.]

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